

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 7787

BILL NUMBER: SB 518

DATE PREPARED: Apr 11, 2001

BILL AMENDED: Apr 11, 2001

SUBJECT: Domestic Violence.

FISCAL ANALYST: Mark Goodpaster

PHONE NUMBER: 232-9852

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

(A) It eliminates prepayment of filing fees and witness fees for proceedings filed solely to: (1) obtain a protective order to prevent domestic violence, stalking, or sexual assault; or (2) enforce a foreign protection order. (B) It eliminates the power of the Marion County Small Claims Court, which is not a court of record, to issue protective orders. (C) It provides for the separation of confidential from nonconfidential information in a petition for a protective order. (D) It allows a court to limit the scope of a protective order, if the court determines that the petition arises from a dispute involving ownership rights, leasehold rights, or easement rights concerning real property. (E) It provides that a protective order is not nullified by an act of the protected person that is inconsistent with the order. (F) It allows an employer to bring an action for a protective order to protect an employee. (G) It provides for the registration and enforcement in Indiana of foreign protection orders issued by another state or an Indian tribe. (H) It provides that when the court clerk sends a summons to the respondent in a protective order case, the clerk must send a copy of the petition that excludes the confidential information that is required to be provided in a separate form. (I) It requires a person who seeks to register a foreign protection order to provide the court clerk with a certified copy of the order. (J) It grants immunity to a governmental entity or employee, including a law enforcement officer, that registers or enforces a court order in good faith without malice. (K) It provides that commission of an offense in the presence or within hearing of a child is an aggravating factor that would justify an increased term of imprisonment or consecutive sentences. (L) It expands the types of protective orders to which the crime of stalking applies. (M) It provides that violation of a protective order issued by an Indian tribe or other related tribal government constitutes invasion of privacy. (N) It requires that a recent photograph and home address of a person convicted of certain sex offenses and other crimes be included in publications of the sex and violent offender registry. It requires that a photograph of the offender be included on the Internet site maintained by the Institute. (O) It establishes a Sexual Assault Victims Assistance Fund to be administered by the Office of Women's Health within the State Department of Health. It establishes a Sexual Assault Victims Assistance Fee. It uses the revenue generated by the Sexual Assault Victims Assistance Fee to fund the Sexual Assault Victims Assistance Fund to provide assistance to rape crisis centers.

Effective Date: (Amended) Upon passage; July 1, 2001.

Explanation of State Expenditures: (Revised) Provision G will add certain violations of protective orders as offenses that could be punished as Class C felonies. The length of imprisonment for a Class C felony ranges between two and eight years, depending on mitigating and aggravating circumstances.

The average expenditure to house an adult offender was \$20,700 in FY 1999. Individual facility expenditures ranged from \$14,936 to \$37,807. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Provision M: Under current law, the court may consider any of 13 factors as aggravating circumstances to determine whether a criminal defendant's sentence should either be increased to the maximum term allowed under law or to impose consecutive terms of imprisonment. Adding this 14th circumstance may increase the prison terms of some criminal defendants.

The following table shows the minimum sentence, presumptive sentence, and the maximum sentence that an offender can receive under current law.

Felony Class	Minimum	Presumptive	Maximum
A	20 years	30 years	50 years
B	6 years	10 years	20 years
C	2 years	4 years	8 years
D	six months	1.5 years	3 years

Effects on State Agencies:

The Indiana State Police would be required to modify its computer system to allow for the entry of foreign protection orders into the Indiana Data and Communications System. In addition, the Division of State Court Administration would be required to prescribe and approve form changes for protective orders before July 1, 2001.

Provision N: *Sex Offender Registry*- The Institute would experience an increase in expenses due to this provision of the bill.

Under current Indiana law, the Institute is not required to publish on the Registry: 1) a recent photograph of the offender; or 2) the home address of the offender. The Institute would be required to do so in light of this bill. (Currently, the Institute publishes the name and offense of the offender, as well as other related items.)

In order to provide a photograph and the home address of the offender to Access Indiana for Internet posting, the Institute would be required to enhance its existing database in which it stores sex offender information. The specific cost is currently indeterminable and could possibly require the help of outside contractors. Although the enhancement of the Institute's database could possibly require certain contractual expenses, the scanning of photographs for incorporation into the Institute's database would be less expensive and could likely be accomplished with a basic office printer/scanner/copier.

Background: The Institute reports that, currently, there are approximately 11,000 entries on the Registry.

Explanation of State Revenues: (Revised) Provision A: This provision would result in a revenue loss to the State General Fund ranging between \$25,313 and \$50,620. However, if legislation prohibiting the payment of filing fees to have a protective order issued in the case of domestic violence charges is not implemented, the state may lose as much as \$7 M in grants from federal sources.

Background: Current statute, IC 33-19-5-4, treats petitions for protective orders as civil filings and charges a \$100 filing fee. Of this fee, a petitioner may pay \$35 upon filing and pay the balance at a later time. This same section also allows the court to waive the fee and require the responding party to pay either the entire fee of \$100 or the \$65 balance. By another section of the statute (IC 34-26-2-4), the court may waive filing fees for protective orders if the petitioner can document an inability to pay the fee. If the fee is waived, the court may order the filing fee to be paid by the responding party.

In practice, counties may treat filing fees for domestic violence cases in one of three ways. They may waive the entire filing fee, charge an initial \$35 and waive the remaining balance of \$65 for a protective order, or allow the petition to be filed in small claims court and charge a \$35 fee. Consequently, the specific revenue loss from this bill is difficult to estimate.

Estimated Number of Cases Affected: In 1999, 21,066 protective orders were reported to be filed in Indiana's courts. Of these, the Marion County Clerk's Office estimates that about 60% of these filings are for domestic violence-related cases. The Marion County Clerk also reports that Marion County no longer collects the filing fee for protective orders in domestic violence cases. Consequently, the number of estimated filings that could be affected by this bill is 10,332.

Estimating the Potential Revenue Loss: It is assumed that the revenue loss from this bill would be from the reduction in the number of filers who would no longer pay the initial \$35 filing fee. As amended, this bill does not prevent the court from collecting court fees from the responding party of a protective order.

Because 70% of the filing fee is deposited in the State General Fund, the revenue loss will range between \$25,000 and \$50,000, as described in the following table.

	Low	High
Protective Order Filings in 1999	21,066	21,066
Percent Domestic (Based on Marion County Estimates)	60%	60%
Estimated Number of Protective Order Filings for Domestic Violence Cases	12,640	12,640
Adjusted Number Paying Filing Fees Excluding Marion County Filings:	10,332	10,332
Fee Paid	\$35	\$35
Assumed Percent Paying	10%	20%
Estimated Loss of Court Fee Revenue	\$36,162	\$72,324
Loss of State Share of Court Fee Revenue at 70%	\$25,313	\$50,627
Loss of Local Share of Court Fee Revenue at 30%	\$10,849	\$21,697

Federal Funding: If the current statute is not amended to automatically waive filing fees and other charges when a protective order has been requested, the state and local programs would no longer be eligible for funding through the Office for Victims of Crime (OVC) under the Victims of Crime Act (VOCA). Between 1997 and 2000, Indiana received the following funds. These funds were used for providing financial

assistance to local programs that assist victims of domestic abuse.

Year	1997	1998	1999	2000
Revenue Received	\$8,546,000	\$5,889,000	\$5,053,000	\$7,873,000

Provision G and H: Besides a term of incarceration, a Class C felony is also punishable by a maximum fine of \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Provision O: Sexual Assault Victims Assistance Fee: A fee of between \$250 and \$1,000 would be assessed on all persons who are convicted of sex-related crimes. The revenue that would be generated from this fee is not able to be definitively estimated because criminal defendants often have limited income. The following shows the five-year average between FY 1996 and FY 2000 of the number of offenders who were committed to Department of Correction facilities for the sex crimes included in the provision.

<u>Crime</u>	<u>5-Year Avg.</u>
Child Exploitation	2
Child Molesting	362
Child Seduction	2
Child Solicitation	3
Criminal Deviate Conduct	4
Incest	9
Rape	57
Sexual Battery	43
Sexual Misconduct with a Minor	86
Vicarious Sexual Gratification	8
Total	<u>576</u>

Of these offenders, if the courts were able to collect \$250 from each offender, the revenue generated would be \$144,000. If the courts are able to collect \$250 from 10% of these offenders, the added revenue would be \$14,400.

Explanation of Local Expenditures: (Revised) Provision B: Marion County Small Claims Courts do not issue protective orders. Consequently, this provision will not have any fiscal impact on local expenditures.

Provision G and H: A Class B misdemeanor is punishable by up to 180 days in jail while a Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Provision N: *Local Registration*- Local law enforcement agencies could experience a minimal increase in administrative expenses due to this provision of the bill. The specific effects are currently indeterminable and would vary between local law enforcement agencies.

Background- Under current Indiana law, local law enforcement agencies are required to report sex offender registrations to the Institute for dissemination to the public via Access Indiana. (In addition, the Institute makes available paper copies of the Registry to the following entities: 1) school corporations; 2) nonpublic schools; 3) various state agencies; and 4) certain child care facilities.)

Local law enforcement agencies would be required to submit a photograph of an offender (at the cost of the offender) to the Institute for later dissemination.

Explanation of Local Revenues: (Revised) Provision A: Counties and municipal governments receive 30% of court fees. Consequently, the revenue loss to these entities would range between \$10,000 and \$21,700, as described in the table above. However, this bill would also prevent the potential revenue loss that local governments would experience if federal assistance for local programs which assist victims of domestic violence (described under state revenues) is eliminated.

Provision G and H: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Criminal Justice Institute, Indiana State Police, Legislative Council, Division of State Court Administration.

Local Agencies Affected: Programs providing assistance to domestic abuse victims, trial courts, local law enforcement agencies.

Information Sources: 1999 Indiana Judicial Report; Marion County Clerk of the Circuit Court; Department of Correction; John Ransburg, Criminal Justice Institute, (317) 232-1232.